

such testimony as tending to anything like accurate identification. The more statement that the man who fired the shots was not one of the four persons whose faces are outlined in a newspaper, without any evidence that such outlines are true and correct representations of the defendants, and in the face of positive testimony that the defendants fired the shots, is worthless.

Identification from portraits of itself is risky and dangerous, and without some supporting or connecting evidence should not be given much weight in a court of law. But identification by newspaper cuts goes to a greater extreme, and no value should be attached to it. This witness, like Dresner, maintained silence until the last hour, notwithstanding that he knew of the public interest and excitement in the case.

Had Admitted He Lied.

"He was willing to deliver up to the delivery of a note from a female friend of Circledom at his house. The only bearing that this testimony can have is on the affidavits interposed by Circledom at the trial. Evidence to sustain an alibi on a motion for a new trial, where the alibi has been passed on by a jury, is, according to all the authorities, standing alone and unsupported by unquestionable proof, little if any value. The witness, like the preceding witnesses, did not come forward until the last hour to give his testimony, though he had been questioned by a deputy commissioner of police to whom he admitted he lied in respect to the delivery of this letter."

"Kalmanson testified that he was in Fort Smith, Ark., in an automobile and recognized Vallen standing on a running board holding a pistol in his hand. He did not know Vallen, had never seen him, and the only means of recognition that he had was that two months later he saw in a Cleveland newspaper a picture purporting to be that of Harry Vallen. This testimony is worthless. This witness also maintained silence until after the decision of the Court of Appeals in the Becker case."

"Sleights have I touched on the principal points in the testimony of each of the four witnesses, and in doing so I have not referred to the testimony of the affidavits in contradiction, nor to the impression which was produced upon my mind during their examination and cross-examination. That impression was most persuasive of disbelief in what they said."

Badge of Dishonor.

Common law says a convicted man could not avail himself of a motion for a new trial, that principles of equity and justice provide that the preferred evidence must be newly disclosed since the trial that if before received, such evidence probably would have changed the verdict, and that the failure to produce it on the trial was not owing to want of diligence. I cannot say that the failure to produce the preferred evidence on the trial was owing to want of diligence on defendants' part, but the failure of the witness to corroborate his story to make clear their opinions is, in my opinion, a badge of distrust. It would be a violation to my conscience and judgment to say that the preferred evidence given by the witnesses whom I have seen and heard probably would have changed the verdict if given upon the trial."

No Appeal to Sympathy.

"On the law and the facts they have had a fair trial and a jury of their fellow-citizens has pronounced them guilty. The court of last resort has unanimously affirmed that conviction. Appeals have been made in these last moments, but the failure of the witness to corroborate his story to make clear their opinions is, in my opinion, a badge of distrust. It would be a violation to my conscience and judgment to say that the preferred evidence given by the witnesses whom I have seen and heard probably would have changed the verdict if given upon the trial."

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Kent in Ignorance.

The prisoners were kept in ignorance of the progress of the hearing before the court and expected what comfort they could find from this last hope. The condemned men were absolutely quiet. Clancy hesitated at the door.

"Well out with it, warden," demand ed Lefty Louis. "We can stand it."

"It's bad news, boys," answered Clancy. And Clancy read the telegram.

The gunmen demanded to know how authentic the message was, who sent it, and just what Justice Gott said.

There was no demonstration. Whitley Lewis sank upon his bed, his face in his hands.

"Well, that's about all," he whispered.

Then, as though inspired by a new thought, Whitley arose.

"Can you tell me if a judge in an important case, like this, where four lives are at stake, when minutes are as valuable as seconds, using a big part of his time talking about a threatening letter and putting witnesses on

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